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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TERESA FARIAS LATTER, NANCY ANN BOOK,
MARY LOUISE HARDZINSKI, JAMES THOMAS MACIEJEWSKI,
THOMAS JOSEPH MCBLAIN, and JOHN WESLEY MOSS

Appeal 2009-004642
Application 09/122,484
Technology Center 2600

Decided: September 23, 2009

Before JOHN C. MARTIN, JOSEPH F. RUGGIERO,
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's final rejection of claims 57-66 and 68-93. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

Appellants' claimed invention is directed to a method and system for providing a called party with audible caller identification information when standard caller identification information cannot be provided (Spec. 2:7-9).

Claim 57, reproduced below, is representative of the subject matter on appeal:

57. A method for processing a call from a calling party at a calling communication station to a called communication station, the method comprising:
 - (a) generating a query in response to the receipt of the call, wherein the query includes the telephone number associated with the calling communication station;
 - (b) determining whether standard caller identification information for the calling communication station can be provided to the called communication station by analyzing data contained within the query;
 - (c) transmitting a request for audible caller identification information to the calling communication station in response to a determination that the standard caller identification information cannot be provided to the called communication station;
 - (d) receiving an override signal from the calling communications station and
 - (e) connecting the calling communication station and the called communication station in response to the override signal and without providing any caller identification information to the called communication station.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Jones	US 5,033,076	Jul. 16, 1991
Bartholomew	US 5,497,414	Mar. 5, 1996
Tatchell	US 5,905,774	May 18, 1999 (filed Mar. 10, 1997)
Bartholomew	US 6,167,119	Dec. 26, 2000 (filed Jan. 12, 1998)

The following rejections are before us for review:

1. The Examiner rejected claims 57-59 under 35 U.S.C. § 103(a) as unpatentable over Bartholomew'414 in view of Tatchell.
2. The Examiner rejected claims 60-66, 68-72, and 75-93 under 35 U.S.C. § 103(a) as unpatentable over Bartholomew'414 in view of Tatchell.
3. The Examiner rejected claims 73 under 35 U.S.C. § 103(a) as unpatentable over Bartholomew'414 in view of Tatchell and further in view of Bartholomew'119.
4. The Examiner rejected claims 74 under 35 U.S.C. § 103(a) as unpatentable over Bartholomew'414 in view of Tatchell and further in view of Jones.

Appellants argue claims 57-59 as a group (App. Br. 7-9).¹ We select claim 57 as representative. Accordingly, claims 58-59 stand or fall with claim 57. *See* 37 C.F.R. § 41.37 (c)(1)(vii) (2004).

We acknowledge that Appellants, at pages 2-4 of the Reply Brief, have made separate and substantial arguments for whether “the provided name and number are utilized by the agent to connect . . . and not connect to the called communication station,” (Reply Br. 3). These arguments have been raised for the first time on appeal in the Reply Brief and they are therefore deemed to be waived. *See Optimus Tech., Inc. v. Ion Beam Appl'n S.A.*, 469 F.3d 978, 989 (Fed. Cir. 2006) (“[A]n issue not raised by an appellant in its opening brief . . . is waived.”) (citations and quotation marks omitted); *see also Ex parte Scholl*, No. 2007-3653, slip op. at n.13 (BPAI Mar. 13, 2008) (informative), *available at* <http://www.uspto.gov/web/offices/dcom/bpai/its/fd073653.pdf> (same).

OBVIOUSNESS
ISSUE

Regarding the rejection of claims 57-59

Appellants argue that neither Bartholomew nor Tatchell discloses or suggests transmitting a request for audible caller identification (App. Br. 7). Appellants argue that Tatchell does not disclose the missing teaching from

¹ Only arguments made by Appellants have been considered in this decision. Arguments which Appellants could have made but did not make in the Brief have not been considered and are deemed waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).

Bartholomew of the agent request in response to a determination that caller identification is not provided (App. Br. 8). Appellants assert that for the system of Tatchell to operate as shown in the relied upon Figure 8b, the caller identification information must be provided, and must not be recognized or previously entered on the call screening and priority list, which then could prompt an agent request (App. Br. 8). Appellants further assert that in Tatchell, if the standard caller identification information were not provided, then the calling's party call is blocked (App. Br. 8).

Appellants also argue that the combination of Bartholomew and Tatchell would simply result in a system in which a PIN was utilized to determine if the calling party was previously established on the call screening and prioritization list (App. Br. 9).

The Examiner finds that Tatchell discloses requesting an audible caller identification (i.e., asks for name and telephone number) to the calling station in response to a determination that the standard caller ID information cannot be provided (Ans. 13). The Examiner finds that Tatchell explicitly teaches that a check is made to determine if it (i.e., the voice call) has a calling line ID (CLID), and if there is none or the CLID is blocked (i.e., no standard caller ID information), the agent (i.e., personal agent processor) answers the call and asks for name and telephone number (Ans. 13) (col. 20, ll. 49-51). Based on this, the Examiner responds that the system of Tatchell does not simply block the call when standard caller information is not provided, since the system of Tatchell requests that caller party to provide name and telephone number for further processing of the call (Ans. 13). Thus, the Examiner concludes that Tatchell discloses the limitation of

“transmitting a request for audible caller identification” and thereby cures the deficiency of Bartholomew (Ans. 13).

The Examiner further responds that the combination of Bartholomew with Tatchell would provide a system wherein the “request for name and phone number” of Tatchell would ultimately replace the “request for PIN” in Bartholomew in order to provide the called party with audible identity of the caller (Ans. 14). The Examiner articulated that Tatchell’s teaching would improve the call screening process of Bartholomew by enabling the calling party, with blocked caller ID or with unavailable caller ID information, to effectively and selectively identify him or herself to the destination party (Ans. 14).

The first issue is whether Appellants have shown that the Examiner erred in finding that Tatchell teaches the limitation of “transmitting a request for audible caller identification information” as recited in claim 57.

The second issue is whether Appellants have shown that the Examiner erred in combining Bartholomew with Tatchell.

FINDINGS OF FACT

The following findings of fact (FF) supported by a preponderance of the evidence primarily for emphasis:

1. Tatchell teaches that a check is made to determine if the incoming voice call has a calling line ID (CLID), and if there is none or the CLID is blocked, the agent answers the call and asks for name and telephone number (in Fig. 8a, elements 89 and 90; col. 20, ll. 49-51).

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2. Bartholomew'414 teaches in Figure 4B at step S140, that a prompt is transmitted to the caller to either enter a PIN number or speak a password (col. 7, ll. 43-47).

PRINCIPLES OF LAW

The Examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). If that burden is met, then the burden shifts to the Appellants to overcome the *prima facie* case with argument and/or evidence. *Id.* The Supreme Court, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), stated that “[r]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

ANALYSIS

Regarding the rejection of claims 57-59

1. *Does Tatchell teach the limitation of “transmitting a request for audible caller identification information?”*

Tatchell teaches that a check is made to determine if the incoming voice call has a calling line ID (CLID), and if there is none or the CLID is blocked, the agent

(i.e., personal agent processor) answers the call and asks for name and telephone number (FF 1).

Thus, Tatchell teaches the limitation of “transmitting a request for audible caller identification information.” Accordingly, we are not persuaded by Appellants’ argument (App. Br. 8), that Figure 8b does not disclose the limitation of “transmitting a request for audible caller identification information” because the Examiner relied on the embodiment of Figure 8a.

2. Have Appellants shown that the Examiner erred in combining Bartholomew with Tatchell?

Bartholomew teaches in Figure 4B at step S140, that a prompt is transmitted to the caller to either enter a PIN number or speak a password (FF 2). While Bartholomew does teach an audible caller identification (i.e., “*speak a password*” (emphasis added)), nonetheless the Examiner introduces Tatchell for the explicit teaching of “request for name and phone number” to ultimately replace the “request for PIN” in Bartholomew to provide the called party with audible identity of the caller (Ans. 14). The Examiner articulated that Tatchell’s teaching would improve the call screening process of Bartholomew by enabling the calling party, with blocked caller ID or with unavailable caller ID information, to effectively and selectively identify him or herself to the destination party (Ans. 14). Thus, the Examiner appropriately articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *See KSR*, 550 U.S. at 418.

For the foregoing reasons, Appellants have not shown error in the Examiner’s finding that Tatchell teaches the limitation of “transmitting a request

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for audible caller identification information,” and the Examiner appropriately combined Bartholomew with Tatchell. Thus, we sustain the rejection of claim 57 and claims 58-59, which fall with claim 57.

Regarding the rejection of claims 60-66 and 68-93

Regarding the obviousness rejections of claims 60-66 and 68-93 over the additional references of Bartholomew’119 and Jones, we find that Appellants have not persuasively rebutted the Examiner’s *prima facie* case of obviousness for these claims, because they presented no further arguments with respect to these rejections.

Once the Examiner has satisfied the burden of presenting a *prima facie* case of obviousness, the burden then shifts to Appellants to present evidence and/or arguments that persuasively rebut the Examiner’s *prima facie* case. *See Oetiker*, 977 F.2d at 1445. Since Appellants did not particularly point out errors in the Examiner’s reasoning to persuasively rebut the Examiner’s *prima facie* case of obviousness, the rejections are therefore sustained.

CONCLUSION

Under 35 U.S.C. § 103, Appellants have not shown that the Examiner erred by finding that Tatchell teaches the limitation of “transmitting a request for audible caller identification information,” and the Examiner appropriately combined Bartholomew with Tatchell.

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ORDER

The decision of the Examiner to reject claims 57-66 and 68-93 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ELD

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